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June 11, 2003

Ms. Victoria J. Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RECEIVED
SURFACE TRANSPORTATION
BOARD
2003 JUN 11 P 4:50
OFFICE OF ENVIRONMENTAL
ANALYSIS

Re: Finance Docket No. 34305, The Burlington Northern and Santa Fe Railway Company – Construction and Operation Exemption – in Merced County, California; Spur to serve Quebecor World Inc.

Dear Ms. Rutson:

As you are aware, The Burlington Northern and Santa Fe Railway Company (“BNSF”) filed a petition on January 14, 2003 with the Surface Transportation Board (“Board”) seeking an exemption from the prior approval requirements of 49 U.S.C. Section 10901 for the construction and operation by BNSF of an approximate 850 foot rail line that will connect the Quebecor World Inc. (“Quebecor”) printing and distribution facility in Merced, CA with BNSF’s existing Stockton Subdivision mainline between Stockton and Bakersfield, CA. The purpose of the proposed construction is to provide the Quebecor facility, which is presently served only by the Union Pacific Railroad Company, with competitive rail service. On March 28, 2003, the Board issued a notice of the grant of a conditional exemption, subject to completion of the environmental review process. See 68 Fed. Reg. 15263.

The environmental review process in this matter has been underway, beginning with a meeting with you and your staff on December 17, 2002, together with representatives of BNSF and Quebecor. At that time, we provided you with detailed written information about the project in an environmental background dated December 2002. Pursuant to BNSF’s request, SEA granted a waiver of the six-month prefiling notice generally required for construction projects on December 27, 2002. And, on December 27, 2002, you notified BNSF of SEA’s selection of Myra L. Frank & Associates, Inc. (“Myra Frank”) as the third-party consultant to assist SEA in preparing the appropriate environmental documentation in this proceeding. The consultation process with other agencies has begun and site visits for first-hand field observations have occurred, including a recent visit on June 4, 2003 attended by Dave Navecky of your staff,

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representatives of Myra Frank, BNSF, and HDR Engineering, Inc. ("HDR"), BNSF's environmental consultant. Other interested agencies, the U.S. Fish and Wildlife Service and the California Department of Fish and Game, participated in that site visit.

Based on all of the foregoing activity and information developed as part of the environmental review process for this project, BNSF requests consideration of several matters. First, BNSF proposes to prepare the preliminary environmental documentation for submission to SEA and its third party consultant for review and verification, except that Myra Frank will conduct the preparation of environmental documentation in the area of cultural resources. The preliminary environmental documentation will be prepared by HDR, consultants familiar with the requirements of the National Environmental Policy Act, 42 U.S.C. Sections 4371 *et seq.* ("NEPA"). Such documentation will address, to the extent reasonable and feasible, other environmental areas under the California Environmental Quality Act, Public Resources Code § 21000 *et seq.* ("CEQA"). However, in light of the significant body of case law precedent and federal statutes addressing principles of federal preemption in the context of rail construction and operation, BNSF would not intend to prepare environmental documentation that would independently satisfy CEQA. *See, e.g.,* 49 U.S.C. 10501(b); *North San Diego County Transit Development Board – Petition for Declaratory Order*, STB Finance Docket No. 34111 (served Aug. 21, 2002) ("state or local laws that would impose a local permitting or environmental process as a prerequisite to the railroad's maintenance, use, or upgrading of its facilities are preempted to the extent that they set up legal processes that could frustrate or defeat railroad operations because they would, of necessity, impinge upon the federal regulation of interstate commerce").

Second, pursuant to 49 C.F.R. §1105.6(d), BNSF hereby requests waiver of 49 C.F.R. §1105.6(a), which generally provides for preparation of an Environmental Impact Statement ("EIS") for a rail line construction proposal. BNSF believes that an Environmental Assessment ("EA"), rather than an EIS, is the appropriate classification based upon the limited scope of the of the above-referenced project (approximately 850 feet of construction). An EA is sufficient in this proceeding under the §1105.6(d)'s standards because the proposed construction and operation of the new rail line is unlikely to have significant environmental impacts. Specifically, project information developed to date indicates that there are not likely to be any significant impacts to transportation systems, land use, energy, air quality, noise, safety, biological resources, surface or ground water resources, or cultural resources. Nor is it anticipated that there will be high or disproportionate impacts on minority or low-income populations based upon the review of existing demographic data for the region and site reconnaissance. In fact, there are no residential areas within or adjacent to the project area. An EA in this instance would be consistent with SEA's reviews of other construction cases of limited scope. *See, e.g., The Burlington Northern and Santa Fe Railway Co.—Construction and Operation Exemption—Seadrift and Kamey, TX*, STB Finance Docket No. 34003 (served June 19, 2001); *Public Service Company of Colorado—Construction Exemption—Pueblo County, CO*, STB Finance Docket No. 33862 (served Jan. 8, 2001).

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Please let me know if you need any additional information to respond to our requests.

Sincerely,

A handwritten signature in cursive script, reading "Kathryn Floyd".

Kathryn A. Kusske Floyd

Attachment

cc: Sarah Bailiff, Esq.
Dave Navecky